No. 287

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

JOHN BARR, PETITIONER,

against

THE UNITED STATES OF AMERICA.

BRIEF OF AMICUS CURIAE

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This brief is filed with the consent of the parties to the case.

Opinions Below

The opinion (R. 134-142) of the United States Customs Court, the trial court, is reported in C.D. 801, Treasury Decisions, advance sheets August 12, 1943, Volume 79, No. 7, page 14. The opinion of the United States Court of Customs and Patent Appeals (R. 145-153) is reported in 143 Fed. (2d) 132; and C.A.D. 279, Treasury Decisions, advance sheets July 6, 1944, Volume 79, No. 54, page 28.

Jurisdiction

The judgment of the Court of Customs and Patent Appeals was entered on May 22, 1944 (R. 153). The peti-

tion for a writ of certiorari was granted October 9, 1944 (R. 155). The jurisdiction of this Court is invoked under section 195 of the Judicial Code (28 U.S.C. §308).

Statement

Section 522(c) of the Tariff Act of 1930[1] provides that the Federal Reserve Bank of New York shall determine the buying rates in the New York market for cable transfers[2] payable in foreign currencies and, in any case where there is no market buying rate for such cable transfers, shall calculate such rate, and shall certify such rates daily to the Secretary of the Treasury who shall make them public at such times and to such extent as he deems necessary. Such rates are certified for use in converting foreign currency into currency of the United States for the purpose of the assessment and collection of *ad valorem* customs duties upon merchandise imported into the United States.

Since the statute specifies a market buying rate at noon, the rate so determined and certified by the Federal Reserve Bank of New York for the currency of a foreign country is the price at which cable transfers payable in the currency of

[1] Section 522 of the Tariff Act of 1930 (Act of June 17, 1930, c. 497, 46 Stat. 739; 31 U.S.C. §372) is set forth in full in the Appendix hereto (pp. i, ii).

[2] A "cable transfer" may be defined as an order transmitted by cable to pay a certain sum of money to a designated payee. Djorup, "Foreign Exchange Accounting" 1926, ed., p. 44; *Oshinsky* v. *Taylor*, 172 N. Y. Supp. 231, at p. 232 (App. Term 1st Dept. 1918); and see *Strohmeyer & Arpe Co.* v. *Guaranty Trust Co.*, 172 App. Div. 16, at p. 19 (1st Dept. 1916) 157 N. Y. Supp. 955. The rate for cable transfers has been termed the basic rate upon which other foreign exchange rates, the demand and time rates, are built. Frank A. Southard, Jr., "Foreign Exchange Practice and Policy", McGraw-Hill Book Company, Inc., New York and London, 1940, p. 86. Pertinent excerpts from this book are set forth in the Appendix hereto (pp. ii-vi).

such foreign country are bought, or bid for, in substantial amounts by dealers in foreign exchange at noon in the free and open foreign exchange market in New York.[5] "If there is no market buying rate for such cable transfers" exactly at noon, then the rate certified is a rate which the Federal Reserve Bank of New York calculates, in the exercise of its judgment and discretion in accordance with the terms and intent of section 522(c), as the rate which would have been the market buying rate had there been transactions or firm bids at that time in an active market with adequate supply and demand.

Section 522(a) directs the Director of the Mint to estimate the value of the pure metal of the standard coins in circulation of the various nations of the world and directs the Secretary of the Treasury to proclaim the value thus estimated. Sections 522(b) and (c) provide that the value thus estimated and proclaimed shall be used in converting the foreign currency into currency of the United States unless the value so proclaimed varies by 5% or more from the value of such currency measured by the rate for cable transfers payable in such foreign currency certified by the Federal Reserve Bank of New York, in which event, or if no value has been proclaimed, the rate so certified shall be used.

Until March 25, 1940, the Federal Reserve Bank of New York had determined and certified daily a single rate of exchange for pounds sterling, and the Secretary of the Treasury had published, and the Collector of Customs had used, such rate. (Stipulation, par. 6, R. 89-90, offered R. 39-40; Exhibit 6, R. 129, offered R. 42; see T.D. 50134) The pounds sterling proceeds of all such exchange were lawfully usable in payment of the purchase price of any and

[5] Southard, "Foreign Exchange Practice and Policy", *supra*, Note 2, pp. 35, 36, 76-79, Appendix pp. ii-iv.

all imports into the United States from the United Kingdom. (R. 77)

Prior to March 25, 1940, the Government of the United Kingdom had established certain financial and exchange control[4] within the United Kingdom (Stip. par. 3, R. 88-89; Exh. 1, 2 and 3, R. 92-120, offered R. 41), and effective on that date it required payment for whisky, furs, tin, rubber and jute exported to the United States to be made by the United States importers either in United States dollars, or with pounds sterling purchased from the Bank of England or other authorized dealer at the "Official" rate of exchange fixed by the British Treasury. (Stip., par. 4, R. 89; Exh. 4, R. 120-123, offered R. 42) The purchase price of any and all products, other than the five specified, exported from the United Kingdom to the United States,[5] including merchandise of the character involved in this case, continued to be lawfully payable with pounds sterling purchased in the open market at the "Free" rate of exchange. (R. 77) Beginning March 25, 1940, therefore, the Federal Reserve Bank of New York determined that there were two rates of exchange for pounds sterling for use in converting pounds sterling into currency of the United States for the purpose of the determination of the dollar value of imported merchandise, and accordingly certified to the Secretary of the Treasury, pursuant to section 522(c), two rates for pounds sterling, one of which it denominated "Official", being the rate fixed by the British Treasury and required

[4] For a brief description of "exchange control" see Ezekiel Mordecai, "Commercial Pan America—A Monthly Review of Commerce and Finance" Volume X, Nos. 9 and 10, September and October 1941, at page 374. For the convenience of the court the relevant excerpt is attached in the Appendix (p. vi).

[5] Whether during the period from March 25, 1940 to May 9, 1940 in addition to the five products, the export of diamonds could not be paid for with pounds acquired at the "Free" rate is not clear. The situation was not a matter of public record. (R. 78, 83-85; Exhibit 10, R. 133-134, offered R. 84)

by the law of England for the purchase of pounds sterling used in payment of the purchase price of the five specified products, and the other of which it denominated "Free", being the rate in the New York open market for foreign exchange payable in pounds sterling, which exchange could be lawfully used in payment of the purchase price of any and all other exports from the United Kingdom to the United States. (Stip. par. 8, R. 90; Exh. 6 and 7, R. 128-132, offered R. 42)

The Petitioner imported certain woolen fabrics which were exported from England on May 3, 1940 and invoiced in pounds sterling. The Petitioner paid the purchase price of the imported merchandise by means of pounds sterling exchange purchased at the "Free" rate. (Stip. par. 10, R. 90-91) On the date of exportation, the two rates for the pound sterling certified by the Federal Reserve Bank of New York to the Secretary of the Treasury were $4.035000 "Official", and $3.475138 "Free". (Stip. par. 8, R. 90; Exh. 7, R. 130-132) The proclaimed rate (pure metal value) in effect on the date of exportation was $8.2397. (Stip., par. 9, R. 90; T. D. 50125) Pursuant to instructions issued by the Secretary of the Treasury to Collectors of Customs to convert the pounds sterling of an invoice into currency of the United States at the "Official" rate in cases where the "Official" rate certified by the Federal Reserve Bank of New York varied by 5% or more from the proclaimed rate (T. D. 50134; 5 Fed. Reg. 1447; T. D. 50146), the Collector of Customs at New York, the port of entry, determined the dutiable value of the imported merchandise by converting the currency of the invoice at the "Official" rate of $4.035. (Stip., par. 12, R. 91)

Petitioner filed protest against the Collector's action,

claiming the currency of his invoice should have been converted at the "Free" rate of exchange (R. 6-7).

The United States Customs Court reviewed the history of the efforts of the United States Government to determine the true dollar values of imported merchandise for the purpose of the assessment and collection of *ad valorem* customs duties from the earliest statutes,[6] which fixed the values of foreign currencies based upon the pure metal values of the coins of such currencies, to the present law[7] authorizing the Federal Reserve Bank of New York to determine the rates of foreign exchange as the measures of values of foreign currencies for such purpose. After consideration of cases pertinent to this legislative history, the court held that, under the well known rule of statutory construction, the single noun "rate" (as used in section 522(c) requiring the Federal Reserve Bank of New York to determine and certify "the buying rate for cable transfers payable in the foreign currency so to be converted") was applicable in the plural, since such an interpretation was necessary in order to give effect to the legislative intent to base *ad valorem* duties upon the true dollar value of the imported merchandise ascertained from the actual purchase price and market value thereof. The Customs Court further held that when the Federal Reserve Bank of New York had certified to the Secretary of the Treasury two rates for the pound sterling, one denominated "Official" and

[6] Beginning with the Act of July 31, 1789, sec. 18, 1 Stat. 41 (First Congress Sess. I, Chap. V).

[7] Section 403 of the Emergency Tariff Act of 1921, Act of May 27, 1921, c. 14, 42 Stat. 17, first enacted the new provisions authorizing the certification of rates by the Federal Reserve Bank of New York. Section 403 was reenacted, without any change pertinent to the issues of this case, as section 522 of the Tariff Act of 1922, 42 Stat. 974, and as section 522 of the Tariff Act of 1930, 31 U. S. C. §372.

the other "Free", the determination of such rates by the Federal Reserve Bank of New York was final and conclusive and the Secretary of the Treasury had no discretionary power to vary, set aside or nullify such determination and had no power or discretion either to reject both rates or to determine which of the two certified rates was proper; that it was the duty of the Secretary of the Treasury under section 522 to publish both rates certified to him; that the Collector of Customs in converting the currency of the invoice at the rate denominated "Official" had acted unlawfully; and, in effect, that it was the duty of the Collector to use for such conversion the lower rate denominated "Free" in order to determine the actual purchase price in dollars and the market value in dollars, and hence the dutiable value in dollars, of the imported woolens.

On appeal, the United States Court of Customs and Patent Appeals, in the judgment under review, reversed the judgment of the United States Customs Court, and held that the selection by the Secretary of the Treasury of one of the two rates for pounds sterling so certified by the Federal Reserve Bank of New York, and the publication by the Secretary of the Treasury of the rate so selected in a manner on its face conforming to the law, "is conclusive and binding on the court and will not be subject to judicial inquiry as to its correctness." (143 Fed. (2d) 132, at page 136; see also page 135; R. 151 and 152)

In the course of its opinion, the United States Court of Customs and Patent Appeals stated (*ibid.* at page 135; R. 152):

> "We are of opinion that section 522(c), *supra*, contemplates the finding of a single buying rate of exchange. This we think is obvious from a reading of the section. There is but one standard of currency in Great Britain; namely, the pound sterling. This is not controverted. If section

> 522(c) were to be construed to mean that any number of buying rates on the New York market could be certified by the Federal Reserve Bank of New York, the ultimate result as far as tariff laws are concerned would obviously be 'confusion worse confounded'. Furthermore, anything in Great Britain could be purchased for pounds sterling converted at the 'official' rate. Such is not the case with 'free' pounds.
>
> "The Secretary of the Treasury published only the buying rate of pounds sterling at the 'official' rate. That was *the all-inclusive* buying rate of pounds. Therefore, the publication by the Secretary of T. D. 50134 on its face conformed to the law and is conclusive and binding on the courts and will not be subject to judicial inquiry as to its correctness, and since the collector's action conforms to the direction of such decision it must be sustained."

The court further stated (at page 136; R. 153):

> "It is not necessary to consider other contentions made herein, nor the history of the legislation leading up to the present tariff statutes here involved in view of what has been said, nor is it necessary to discuss the many cases from the beginning of tariff history to the present time which have been cited by the parties."

The purpose of this brief of the Federal Reserve Bank of New York as *amicus curiae* is to urge this Court to affirm the view of the trial court, that the certification by the Federal Reserve Bank of New York of both the "Official" rate and the "Free" rate for pounds sterling was appropriate and consistent with section 522(c) of the Tariff Act. This is the issue with which the Federal Reserve Bank of New York is concerned. It is not concerned with the decision of the United States Court of Customs and Patent Appeals to the effect that when the Federal Reserve Bank of New York certifies more than

one rate for the currency of a foreign country, the action of the Secretary of the Treasury in selecting one of such rates for use in the conversion of such foreign currency is conclusive and binding and not subject to judicial inquiry as to its correctness; except that it necessarily follows from the arguments in POINT I of this brief that the procedure followed by the Treasury Department results in defeating the intent of Congress to base *ad valorem* duties on the actual purchase price and market value of the imported merchandise.

As the selection by the Secretary of the Treasury of the "Official" rate was held by the Court of Customs and Patent Appeals to be final, it was immaterial to the Court's decision whether or not an additional rate had been certified by the Federal Reserve Bank of New York. In view of this, the Court's statement to the effect that the statute contemplated the certification of only one rate by the Federal Reserve Bank of New York is dictum. However, the Federal Reserve Bank of New York is charged with the duty, under section 522(c) of the Tariff Act of 1930, of determining and certifying foreign exchange rates, in accordance with the law and the intent of Congress, for use in the assessment and collection of customs duties. It is a matter of public concern, as well as of special interest to the Bank, that any uncertainty which may exist by reason of the dictum of the Court of Customs and Patent Appeals, as to the authority of the Federal Reserve Bank of New York under section 522(c) to certify more than one rate for foreign exchange payable in the currency of a single foreign country when more than one such rate actually exists in the New York market, should be removed.

The Bank's duty is an important one. In the calendar year 1941 the reports of the Department of Commerce indicate that merchandise valued at more than $150,000,000

subject to *ad valorem* duties aggregating approximately $30,000,000 was imported into the United States from countries for the currencies of which dual or multiple rates were certified.[8] The use of "Official" and similar rates fixed by foreign governments, instead of the "Free" rates, in the conversion of foreign values of merchandise imported into the United States subject to *ad valorem* custom duties, would compel importers of the United States to pay higher custom duties than those which, it is submitted, were intended to be imposed by Congress.[9]

The discontinuance in every case of the certification of more than one rate for the currency of a single foreign country would terminate a practice which began in 1936 and has been continued ever since. Dual and multiple rates of foreign exchange exist, and have existed for several years, with respect to the currencies of numerous foreign countries.[10] The record in this case shows that dual rates were

[8] Report of the U. S. Department of Commerce on "Foreign Commerce and Navigation of the United States for the Calendar Year 1941", Table No. 1, at pp. 12-219. The aggregate figures are derived from a reclassification by countries of the commodities imported, subject to *ad valorem* duties, from Argentina, Australia, Brazil, Canada, Chile, Iran, Newfoundland (and Labrador), United Kingdom and Uruguay, and from a calculation of duties on such imports at the rates of duties shown in the Table.

[9] Exhibits 7 and 8 (R. 130-132, offered R. 43) show that the differences between the two rates certified for each of seven foreign currencies on May 3, 1940, were approximately as follows:

England	—"Official"	16% higher than "Free"
Australia	—"Official"	17% higher than "Free"
Canada	—"Official"	8% higher than "Free"
Newfoundland	—"Official"	8% higher than "Free"
Brazil	—"Official"	20% higher than "Free"
Chile	—"Official"	29% higher than "Export"
Uruguay	—"Controlled"	69% higher than "Non-Controlled".

[10] United States Tariff Commission Report to Committee on Ways and Means, House of Representatives (1934), pp. 1 and 2. The pertinent excerpt is set forth in the Appendix (pp. vii-viii); Southard, *supra*, Note 2, pp. 188-189, Appendix pp. v-vi.

certified on May 3, 1940, for currencies of seven countries (Exh. 7, R. 131). The following Treasury Decisions, of which the Court will take judicial notice, also show the certification of such dual rates:

Country	Currency	Treasury Decision Reference
Brazil	milreis	T.D. 48467, Aug. 8, 1936
Brazil	milreis	T.D. 49893, June 19, 1939
Chile	peso	T.D. 49278, Dec. 6, 1937
Uruguay	peso	T.D. 49899, June 26, 1939
Canada	dollar	T.D. 50134, Apr. 15, 1940
Newfoundland	dollar	T.D. 50134, Apr. 15, 1940
England	pound sterling	T.D. 50134, Apr. 15, 1940
Australia	pound	T.D. 50134, Apr. 15, 1940

Since May 3, 1940, dual or multiple rates have also been certified for currencies of certain additional countries, one of which certifications (for the Argentine peso) is shown by a Treasury Decision (T. D. 50354, March 28, 1941).

Questions Presented

1. When more than one rate of exchange exists for currency of a foreign country, is the Federal Reserve Bank of New York authorized by section 522(c) of the Tariff Act of 1930 to determine and certify to the Secretary of the Treasury more than one of such rates?

2. Was the Federal Reserve Bank of New York authorized by section 522(c) of the Tariff Act of 1930 to determine and certify to the Secretary of the Treasury two rates for pounds sterling in the case at bar?

Statute Involved

Section 522 of the Tariff Act of 1930 (Act of June 17, 1930, c. 497, 46 Stat. 739; 31 U.S.C. §372) is printed in the Appendix hereto, at pages 49-50.

SUMMARY OF ARGUMENT

POINT I

Section 522(c) of the Tariff Act of 1930 authorizes the Federal Reserve Bank of New York to determine, and certify to the Secretary of the Treasury, more than one buying rate for cable transfers payable in currency of a foreign country when in fact there is more than one such rate in the New York market for foreign exchange lawfully used by importers in payment for merchandise imported into the United States from such country.

A. *This interpretation of section 522(c) is required to carry out the purpose and intent of the section as shown by the legislative history of section 522.*

B. *That section 522(c) authorizes the certification of rates of exchange the use of which will produce, or most nearly approximate, the actual dollar values of the imported merchandise, is the only interpretation of that section consistent with the fundamental principles upon which the tariff acts have always been based.*

C. *The fact that section 522(c) uses the words "the rate" instead of the words "the rate or rates" does not defeat the purpose of the statute.*

POINT II

Upon the facts in this case the Federal Reserve Bank of New York was authorized by section 522(c) of the Tariff Act of 1930 to determine and certify to the Secretary of the Treasury two rates for pounds sterling.

POINT III

The rate or rates for foreign exchange payable in currency of a single foreign country determined and certified by the Federal Reserve Bank of New York, pursuant to section 522(c) of the Tariff Act of 1930, are final and conclusive and not subject to judicial review.

ARGUMENT

POINT I

Section 522(c) of the Tariff Act of 1930 authorizes the Federal Reserve Bank of New York to determine, and certify to the Secretary of the Treasury, more than one buying rate for cable transfers payable in currency of a foreign country when in fact there is more than one such rate in the New York market for foreign exchange lawfully used by importers in the payment for merchandise imported into the United States from such country.

A. *This interpretation of section 522(c) is required to carry out the purpose and intent of the section as shown by the legislative history of section 522.*

It is clear from the legislative history of section 522 and the cases pertinent thereto that it has been the effort and purpose of the Congress of the United States to ascertain as nearly as practicable the market value in dollars, of imported merchandise subject to *ad valorem* customs duties, by the use of the foreign exchange rate for the currency of the invoice when the value of the currency measured by such rate differed materially from the metallic value of that currency.

The continuous efforts of Congress to devise and put into effect a practicable solution of the difficult problem of valuing foreign money so that the true dollar values of imported merchandise may be computed for the assessment and collection of *ad valorem* customs duties are reflected in the numerous Federal statutes enacted for the purpose. These efforts of Congress culminated in the present provisions of section 522(c) of the Tariff Act of 1930 (first enacted in 1921, see Note 7, *supra*).

The first statute for the collection of duties computed upon the values of the merchandise in currency of the United States was the Act of July 31, 1789 (c. V, sec. 18, 1 Stat. 41, Note 6, *supra*). For the purpose of ascertaining dutiable values, it prescribed specific dollar values of selected units of foreign coins and currencies, probably those which at that time were most in use as currency

within the United States.[11] The statutory values were based upon the pure metal content of coins.[12]

Subsequent to the enactment of the Act of July 31, 1789, war broke out among the nations of Europe and in some of those nations, specie payments were suspended and fiat moneys, that is currencies based only on government credit, were adopted. This resulted in depreciation of the values of those currencies in United States money, so that the statutory metallic values were no longer measures of the true dollar values of imported merchandise purchased with such currencies. This led to the enactment of the Act of March 2, 1799 (Fifth Cong. Sess. III, c. XXII,

[11] See the opinion of the lower court reported in *The Collector* v. *Richards*, 23 Wall. 246, at pages 250 and 252 (1874).

[12] The Act of July 31, 1789 further provided that all other denominations of money should be estimated "in value as near as may be" to such prescribed values, sec. 18, 1 Stat. 41. This method of fixing by statute the values of foreign currencies for customs purposes was discontinued by the Act of March 3, 1873 c. CCLXVIII, secs. 1, 2 (17 Stat. 602), except as to the par of exchange for the pound sterling which was discontinued by the Emergency Tariff Act of 1921, *supra*, Note 7. Statutes relating to prescribed values of foreign currencies for customs purposes which were enacted between the Act of July 31, 1789 and the 1873 Act, *infra*, Note 14, were: Act of September 29, 1789, c. XXII, sec. 3, 1 Stat. 95; Act of August 4, 1790, c. XXXV, sec. 40, 1 Stat. 167, and par. 2 of sec. 74, and sec. 75, of the same act, 1 Stat. 178; Act of March 3, 1791, c. XIX, 1 Stat. 215; Act of May 2, 1792, c. XXVII, sec. 17, 1 Stat. 262; Act of March 2, 1799, c. XXII, sec. 61, 1 Stat. 673; Act of March 3, 1801, c. XXVIII, secs. 1 and 2, 2 Stat. 121; Act of July 27, 1842, c. LXVI, secs. 1 and 2, 5 Stat. 496; Act of March 3, 1843, c. XCII, 5 Stat. 625; Act of March 3, 1845, c. XLV, 5 Stat. 740; Act of May 22, 1846, c. XXIII, 9 Stat. 14; Act of March 2, 1861, c. LXXV, 12 Stat. 207. It appears that until 1857 the values placed upon foreign coins when such coins were used in the United States in payment of debts differed from the values placed by these statutes upon foreign currencies for the ascertainment of the dutiable values in dollars of imported merchandise (see *The Collector* v. *Richards*, *supra*, Note 11, at page 260 and also pages 251 and 252).

sec. 61, 2nd par., 1 Stat. 673). A proviso in this Act authorized the President to establish regulations for computing duties on imported merchandise "in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government".[13]

Cramer v. *Arthur*, 102 U. S. 612 (1880) (at page 617).

These provisions remained in effect until the enactment in 1921 of the provisions now contained in section 522(c) of the Tariff Act of 1930.

Pursuant to this proviso in the 1799 Act, market rates for depreciated currencies were obtained through consular officers in foreign countries under regulations providing that when an invoice was made out in a depreciated currency a consular certificate should be attached to the invoice stating the value of the depreciated currency in terms of United States currency.

Cramer v. *Arthur*, *supra*;

Brown & Roese v. *United States*, 31 T.D. 509, at pages 510-511, T.D. 38861 (Gen. Appr. 1916);

United States v. *J. Allston Newhall & Co.*, 91 Fed. 525, at pages 530-531 (Cir. Ct., Mass. 1899); App. dism. 92 Fed. 1023 (C.C.A. 1st 1899).

Because of dissatisfaction with the system of fixing metallic values by statute, Congress in 1873 adopted a new

[13] Act of March 2, 1799, proviso of sec. 61, 1 Stat. 673, which was incorporated into the Revised Statutes with only formal changes as section 2903 and remained in force until repealed by section 403(d) of the Emergency Tariff Act of 1921, *supra*, Note 7, which Act substituted the provisions of section 522(c) for the provisions of both this proviso and the proviso of section 25 of the Act of August 27, 1894, c. 349, 28 Stat. 552. The latter vested in the Secretary of the Treasury authority to determine and use a foreign exchange rate in ascertaining dutiable values in dollars.

method by enacting a statute[14] directing the Director of the Mint to estimate annually the pure metal value of coins of standard value which were "standard coins in circulation of the various nations of the world", and directing the Secretary of the Treasury to proclaim such values.[15] These provisions (with an amendment requiring quarterly, instead of annual, estimates and proclamations) constitute the present section 522(a) of the Tariff Act of 1930.[14]

As this Court pointed out in the *Cramer* case, the use of official instrumentalities to fix the values of foreign moneys for the purpose of assessing customs duties was "devised for the purpose of making a nearer approximation to the actual state of things" (p. 619), and "The Government gets at the truth, as near as it can, and proclaims it" (p. 617), and, as a means to that end, statements in invoices of the actual cost in foreign currency of the imported merchandise "usually furnish the basis for estimating the actual values of the goods" (p. 618).

As stated in *Detrick* v. *Balfour*, 8 Fed. 468 (Cir. Ct.

[14] Section 1 of the Act of March 3, 1873, c. 268 (17 Stat. 602) entitled "An act to establish the custom house value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange." (The sovereign was the gold coin that had the value of a pound sterling, there being, strictly speaking, no standard pound sterling coin.) Section 2 of the Act contained a statutory value of $4.8665 for the pound sterling designated the "par of exchange". Sections 1 and 2 were incorporated into the Revised Statutes in sections 3564 and 3565, respectively. Section 3564 was superseded by the Act of October 1, 1890, c. 1244, sec. 52, 26 Stat. 624, which reenacted the section except that quarterly instead of annual estimates and proclamations were required. Section 52 was reenacted without change by the Act of August 27, 1894, c. 349, 28 Stat. 552, and reenacted in turn in section 403 of the Emergency Tariff Act of 1921, in section 522 of the Act of Sept. 21, 1922 and as section 522(a) of the present Tariff Act of 1930. Section 3565 Rev. Stat. was repealed by the Emergency Tariff Act of 1921.

[15] The provision refers to "standard coins . . . in a perfect state, and . . . the actual amount of pure metal in each." See *The Collector* v. *Richards*, *supra* Note 11, at p. 259.

Cal., 1881), with respect to the 1873 Act (at page 471):

> "The object seems to be to get at the real, actual value of the foreign coin in the money of the United States. *Collector* v. *Richards*, 23 Wall. 246. By obtaining the actual value of the foreign coin in our own money, we obtain the actual value of the goods estimated in foreign coins in the money of the United States."

Section 25 of the Act of August 27, 1894, reenacted the 1873 provisions as to the estimation of metallic values by the Director of the Mint and proclamation of them by the Secretary of the Treasury, and added a new proviso which authorized the Secretary to order the reliquidation of any entry at a value different from the proclaimed metallic value of the foreign coin "whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."[16]

[16] Act of August 27, 1894, c. 349, sec. 25, 28 Stat. 552, reads as follows:

> "That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July, and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, That the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

The meaning of the new proviso in the 1894 Act was passed upon by this Court in *United States* v. *Whitridge*, 197 U. S. 135 (1905). In that case the foreign value of the imported merchandise was stated in rupees of India. At the date of exportation the exchange value of the rupee exceeded its metallic value as proclaimed by the Secretary of the Treasury (apparently 32 cents and 20.7 cents, respectively). Upon a reliquidation of duties ordered by the Secretary, the exchange value was used by the Collector for the conversion of the foreign value of the merchandise. The importer contended that the proviso of the statute meant merely that the Secretary might direct the use of some other metallic (bullion) value than that proclaimed, and that the exchange value used by the Secretary was, therefore, improper; and further that the only power of the Secretary to use a foreign exchange value and thus take up the fluctuations in exchange was under the proviso of the 1799 Act which limited the use of the exchange value to depreciated currencies and did not authorize the use of an exchange value for an appreciated currency. The Supreme Court, in reversing the lower court, sustained the use by the Secretary of the Treasury of the foreign exchange rate. Mr. Justice Holmes, who rendered the opinion for a unanimous court, stated (at page 142):

> "On the other side we start with the consideration that to an *ad valorem* tax it must be an object to ascertain the true value of the thing taxed at the time as of which it is taxed, and that the invoice price is referred to only to that end. The history of the statutes shows a series of continually closer approximations to it, and to our mind helps the contention of the Government, not that of the other side. The statutes began by fixing the rates for specified coins absolutely. Then, in 1873, they provided in the language of the first part of 25, quoted above, for an annual estimate by the Director of the Mint

and a proclamation. Act of March 3, 1873, c. 268, 17 Stat. 602, Rev. Stat. §3564. In 1890 the estimate was required to be quarterly, instead of for the year. Act of October 1, 1890, c. 1244, §52, 26 Stat. 567, 624. Finally, on August 27, 1894, the statute received its present form, with the proviso from which the Secretary derives his clearest grant of power. The general purpose of this proviso undeniably is to secure a closer approximation still. In construing it we must bear this obvious purpose in mind. While no doubt the grammatical and logical scope of a proviso is confined to the subject matter of the principal clause, we cannot forget that in practice no such limit is observed, and when, as here, we are dealing with an addition made in new circumstances to a form of words adopted many years before, the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down. *Georgia Railroad & Banking Co. v. Smith*, 128 U. S. 174, 181."

The court held (at page 146) that under the proviso the Secretary of the Treasury was authorized to order a reliquidation in order to make the value in United States currency correspond with the actual value of the goods. The court made clear (pp. 144-145) that the value of "the unit of actual cost" was the relevant rate and that "a reliquidation on the basis of the units actually used" was the proper procedure; in other words, that the actual cost per unit to the importer of the currency used in payment for the merchandise must be used in conversion of that currency.

As appears from this and other cases, the Secretary of the Treasury has recognized that the rate for the foreign exchange with which imported merchandise is purchased is the sound measure of value of the foreign currency to be used in the computation of dutiable values

in dollars for customs purposes, and that the use of such rates produces values in United States currency which are, or most nearly approximate, the actual dollar values of the imported merchandise.

Klumpp v. *Thomas*, 162 Fed. 853 (C.C.A. 3rd 1908), cert. denied 212 U. S. 579;

J. K. Clarke v. *United States*, 17 C.C.P.A., Customs 420, T. D. 43866 (1930).

See *Brown & Roese* v. *United States*, *supra*.

As stated by the Attorney General in his brief for the United States in the *Whitridge* case (at page 136):

> "The policy of the Government as to *ad valorem* duties is to assess at actual cost or market value . . ."

In 1921, following the violent fluctuations in foreign exchange rates which had occurred after the first World War, the proviso of the 1894 Act granting authority to the Secretary of the Treasury to determine foreign exchange rates for use on reliquidations was superseded by the amendment (c. 14, sec. 403 (b) and (c)) now constituting, with an amendment not pertinent here, paragraphs (b) and (c) of section 522. The provision for Presidential regulations under which consuls certified values of foreign currencies, and the provision establishing the "par of exchange" for the pound sterling, were repealed at the same time. (See Notes 12, 13 and 14, *supra*) The Committee on Finance of the United States Senate, in reporting to the Senate section 403 of the 1921 Tariff Act stated[17] that the new provisions were in lieu of reliance on consular certificates which had proven unsatisfactory because of

[17] Senate Report No. 16, 67th Cong., 1st Sess., p. 16 (1921).

their frequent omission from shipping papers.[18] The purpose of the changes made in 1921 is summarized in *Fry & Friedsam v. United States*, 12 Ct. Cust. App. 486, T. D. 40634 (1925).

The court in that case stated (at page 489):

> "It will be observed that section 403 of the emergency tariff act of May 27, 1921, purports to be, and is, a complete revision of said section 25; that said section 25 is repeated without material

[18] In the same year as the 1921 amendment, which first enacted provisions now contained in section 522, Congress enacted the Anti-dumping Act of 1921 (42 Stat. 11, 19 U.S.C. §160-171). Later it enacted the countervailing duty provisions of sections 303 of the Tariff Acts of 1922 (42 Stat. 935) and 1930 (19 U.S.C. §1303), which superseded the somewhat similar provisions of earlier Acts. Section 303 provided for the imposition of additional duties equal to any bounty or grant upon the manufacture or production of any merchandise in, or export of any merchandise from, any foreign country. The manifest purpose of these statutes is to provide means for counteracting foreign price cutting for export (i.e., dumping) and grants or bounties by a foreign country, whether caused by foreign manipulation of foreign exchange rates or otherwise.

F. W. Woolworth v. United States, 115 Fed. (2d) 348, 28 C.C.P.A. (Customs) 239 (1940).

Presumably the same purpose is reflected in the requirement of the Tariff Acts that the higher of (1) the market value of imported merchandise for home consumption in the country of exportation (its foreign value) and (2) its market value for exportation to the United States (its export value), shall be the dutiable value. Section 402(a), (1), (c) and (d) of the Tariff Act of 1930, 46 Stat. 708 and 709, 19 U.S.C. §1402(a), (1), (c) and (d). It is clear, therefore, that in enacting section 522(c) Congress did not intend an abandonment of its established policy for ascertaining the true dollar values of imported merchandise and did not intend that any foreign manipulation should be compensated for by reciprocal manipulation by the Federal Reserve Bank of New York of a rate of foreign exchange certified under section 522(c).

V. Mueller & Co. v. United States, 115 Fed. (2d) 354 (C.C.P.A. (Customs and Patent Appeals, 1940);

Nicholas & Co. v. United States, 249 U.S. 34 (1919);

International Forwarding Co., Inc. v. United States, Vol. 76, No. 43, Treas. Dec. 55 (Customs Ct. 3rd Div. Apr. Term, 1941).

change until that portion of said section is reached in and by which a method is provided for ascertaining foreign exchange values. That portion of said section is omitted from section 403 of the act of May 27, 1921, and is therefore repealed. In lieu of the method provided by said section 25, a new method of ascertainment of the value of foreign currency is provided, namely, a determination by the Federal Reserve Bank of New York, which shall be certified daily to the Secretary of the Treasury, and which said valuation as to any importation shall be effective at noon on the day of exportation.

"It is evident this change in our method of fixing foreign currency values was brought about by the violent fluctuations in the values of foreign currency during the period immediately following the World War, and which existed at the time of the enactment of said emergency tariff act of 1921. By said section 25, cumbersome and slowly moving machinery was provided by which, on special occasions, and upon the production of 'satisfactory evidence', the Secretary of the Treasury might ascertain and fix a different exchange value from that proclaimed by him for the quarter. By said section 403, for purposes of celerity and dispatch, a departure from the proclaimed exchange rate may be had when 'the value so proclaimed varies by 5 per centum or more', a fact which obviously must be found in the first instance by the collector."

The provisions thus enacted, which were reenacted without substantial change in section 522(c) of the Tariff Act of 1930, show explicitly the purpose and intent of Congress to ascertain more accurately than had been done under the earlier statutes the true dollar values of imported merchandise by use of the market rate of the foreign exchange with which the merchandise was purchased. This purpose and intent make it clear that the Federal Reserve Bank of New York is authorized to certify the rates of

foreign exchange necessary or appropriate for the determination of the true dollar values of imported merchandise. This in turn necessarily involves a certification of more than one rate for currency of a single foreign country when, by reason of the relatively new foreign exchange control laws and regulations of such country, different rates exist in the New York market for cable transfers payable in the currency of such country, and different types of merchandise imported into the United States from such country are paid for by means of such cable transfers purchased at such different rates.

B. *That section 522(c) authorizes the certification of rates of exchange the use of which will produce, or most nearly approximate, the actual dollar values of the imported merchandise, is the only interpretation of that section consistent with the fundamental principles upon which the tariff acts have always been based.*

The ascertainment of the true market value in dollars of the imported merchandise is the same purpose which underlies the determination of values under the general tariff statutes. Those statutes provide for the ascertainment of the dutiable value of imported merchandise from market values and offering prices and, when those cannot be satisfactorily ascertained, from the cost of production, and they also provide for a true statement in the invoice of the purchase price of the merchandise.

See sections 402 and 481 of the Tariff Act of 1930, 19 U.S.C. §§1402, 1481;

Act of July 31, 1789, *supra*, Note 6.[19]

[19] This early Act provided that "invoices of all importations shall be made out in the currency of the place or country, from whence the importation shall be made, and not otherwise" (sec. 18, 1 Stat. 41).

The principle of ascertaining the true market value in dollars of imported merchandise, by the use of the rate for foreign exchange with which the price of the merchandise is payable, applies to one of several rates for the currency or currencies of a single country just as it applies to one of several rates each of which is for the currency of a different country. An obvious analogy exists where the different currencies of several countries have a common designation, such as "pounds". In such a case, different rates are used to give the different market values, dependent upon whether the imported merchandise was purchased with British, Australian or other type of pounds in Great Britain, Australia or other country, respectively. Even if the importations came from the same country, the rate of exchange for the currency with which the respective importation was usually purchased would be required to ascertain the true dollar value.[20]

Isham v. *United States*, 44 Treas. Dec. 411 (Bd. of Gen. Appraisers, 1923).

It follows that for the purpose of section 522(c) it is immaterial whether different rates for each of two or more currencies, or two or more rates for a single currency, are involved.

C. The fact that section 522(c) uses the words "the rate" instead of the words "the rate or rates" does not defeat the purpose of the statute.

It is an established rule of statutory construction, referred to in the opinion of the United States Customs

[20] The Treasury Department recognizes "that two or more currencies of different character may circulate" in a foreign country, and has provided for the use of the foreign exchange rate for each currency; the rate used for conversion being the rate for "the currency in which identical or similar merchandise is usually bought and sold in the ordinary course of trade . . ." Article 776(b) and (e), Customs Regulations of 1937 as amended October 10, 1940 by T.D. 50251 (i) and (j).

Court, that, if it is necessary in order to carry out the purpose and intent of the legislative body, (1) a term used in a statute in the singular will be interpreted as both singular and plural, and (2) the statute will be so interpreted as to extend to new situations which the drafters did not specifically foresee.

Rev. Stat. §1 (1 U.S.C. §1);[21]

United States v. *Oregon and California R.R. Co.* 164 U. S. 526, at page 541 (1896);

In re Eikel, 283 Fed. 285 at page 289, (D.C., Tex. 1922) rev. on other grounds, 285 Fed. 732 (C.C.A. 5th 1922), cert. denied 262 U. S. 754;

Portland v. *New England Tel. & Tel. Co.* 103 Me. 240, 68 Atl. 1040 at page 1043 (1907).

The relevant portion of section 1 of the United States Revised Statutes, *supra*, as contained in the United States Code, reads as follows:

> "Section 1. In determining the meaning of any Act or resolution of Congress passed subsequent to February 25, 1871, words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; * * * unless the context shows that such words were intended to be used in a more limited sense * * *."

This provision of the Revised Statutes was cited in the recent case of *Twin City Milk Producers Ass'n.* v. *McNutt*, 122 Fed. (2d) 564 (C.C.A., 8th, 1941). There a statute authorized the Federal Security Administrator to "promulgate regulations fixing and establishing for any

[21] This section was derived from Act of February 25, 1871, c. LXXI, sec. 2, 16 Stat. 431, and was incorporated into the Revised Statutes in 1873.

food, under its common or usual name as far as practicable," a definition and standard of identity and other standards. The Administrator's regulation dealt with "Dried Skim Milk, Powdered Skim Milk, Skim Milk Powder" collectively. The Court wrote (at page 568):

> "It is claimed that the adoption of three designations, 'dried skim milk', 'powdered skim milk', and 'skim milk powder', was not a compliance with the provisions of the Act requiring the use of the 'common or usual name'. * * * Where several common or usual names for a food product are found to be in general ultimate consumer use, a reasonable construction of the Act does not require that the Administrator be prohibited from adopting more than one term or designation in promulgating an appropriate regulation to promote honesty and fair dealing in the interest of consumers. Nor is such a strict singular construction of the term 'common or usual name' required per se, in view of the general congressional declaration in 1 U.S.C.A. §1, that 'In determining the meaning of any Act or resolution of Congress, passed subsequent to February 25, 1871, words importing the singular number may extend and be applied to several persons or things.'"

Even though Congress may not have actually contemplated the application of section 403(e) of the Emergency Tariff Act of 1921 (reenacted in substance as section 522(e) of the Tariff Act of 1930) to situations involving two or more rates in the New York market for foreign exchange payable in the currency of a single foreign country, the provisions of the section properly construed authorize the certification of different buying rates for different classifications of foreign exchange payable in such currency when at any time after the enactment of the statute the exchange control laws of such foreign country create different classifications of such foreign exchange, based on

different derivations and permitted uses thereof, and different rates actually exist in the New York market for such different classifications. In *Hurley* v. *Inhabitants of South Thomaston*, 105 Me. 301, 74 Atl. 734 at page 736 (1909), the court sets forth the rule:

> ". . . as stated in Endlich on the Interpretation of Statutes, §112, 'The language of the statute is generally extended to new things which were not known and could not have been contemplated by the Legislature when it was passed. This occurs when the act deals with a genus, and the thing which afterwards comes into existence is a species of it.'"

These rules of statutory construction for the inclusion of cases not within the exact letter of a statute involve the same basic principle of law as the rule which excludes cases within the literal terms, but outside the intent, of a statute.

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers."
>
> *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, at page 459 (1892)

The general principle may be stated to be:

> "The strict letter of an act must, however, yield to its evident spirit and purpose, when this is necessary to give effect to the intent of Congress . . . And unjust or absurd consequences are, if possible to be avoided."
>
> *Fleischmann Construction Co.* v. *United States*, 270 U. S. 349, at page 360 (1926);
>
> *See Haggar Co.* v. *Helvering*, 308 U. S. 389, at page 394 (1940)

In interpreting the statute "the practical purpose of the statute" and the "legislative plan" should be taken into consideration.

Royal Indemnity Co. v. *American Bond & Mortgage Co.*, 289 U. S. 165, at page 169 (1933);

United States v. *Katz*, 271 U. S. 354, at page 357 (1926)

In the light of the purpose and intent of Congress and the "legislative plan" in enacting the provisions of section 522 (c), it would seem difficult to conceive of a clearer situation for the application of these rules than in the interpretation of section 522(c) under the conditions existing with respect to the pound sterling on May 3, 1940.

A similar question of interpretation arose under the 1894 amendment (Act of August 27, 1894 c. 349, sec. 25, 28 Stat. 552) to the then existing statutes. That amendment was the immediate predecessor of the present provisions of section 522(c) of the Tariff Act of 1930. (*Supra*, Note 13.) The amendment conferred upon the Secretary of the Treasury authority to use, for conversion of foreign currencies for customs purposes, a different value than the proclaimed metallic value. This Court, in *United States* v. *Whitridge*, *supra*, (at page 142), in order to effect the general purpose and intent of Congress with respect to situations not specifically contemplated at the time of the enactment of the amendment, interpreted it as authorizing the Secretary of the Treasury to determine and use the current foreign exchange rate for an appreciated or depreciated foreign currency, contrary to the grammatical and logical scope of the amendment which was confined to metallic values of foreign coin.

This Court will take judicial notice of the fact that since the enactment in 1921 of the provisions now con-

tained in section 522(c) chaotic conditions have affected the currencies and foreign exchanges of the world. Foreign laws, decrees and regulations of one kind or another have imposed controls or restrictions on foreign exchange and export transactions in the light of which the duties of the Federal Reserve Bank of New York under the statute must be construed. It is a matter of common knowledge, and continuous public comment and discussion, that most of the countries of the world are not now, and have not been for some years past, on the gold standard; that many countries now have, and have had for a number of years, measures for the control and restriction of foreign exchange and export transactions; and that these measures have resulted in different rates for foreign exchange payable in the currency of a single foreign country, varying with the derivation and use of the particular exchange. Reference to public documents of the Government, of which this Court will take judicial notice, shows that exchange control measures have been in effect a number of years.

> House Document No. 15, 76th Congress, 1st Session, Twenty-second Annual Report of the United States Tariff Commission (1938), pursuant to section 332 of the Act of Congress approved June 17, 1930 (46 Stat. 698), p. 1.
>
> "Regulation of Tariffs in Foreign Countries by Administrative Action", United States Tariff Commission, Report to Committee on Ways and Means, House of Representatives (1934), pp. 1-2, 5-6.[22]

That this Court will take judicial notice of the contents

[22] Excerpts from these public documents containing references to exchange control measures in Great Britain and elsewhere, are set forth in the Appendix (pp. vii-viii). See Southard, *supra*, Note 2, pp. 188-189, Appendix, pp. v-vi; and Mordecai, *supra*, Note 4, p. 374, Appendix, p. vi.

of public documents and reports of Commissions made to Congress is well settled.

> *Arizona* v. *California*, 283 U.S. 423, at pages 453-4 (1931).

With respect to facts of public notoriety pertaining to values of foreign currencies, this Court at an early date took judicial notice of the "intrinsic value of the pound sterling, as represented by the gold coins of England", (*The Collector* v. *Richards*, 23 Wall. 246, at page 258 (1874)); and in *United States* v. *Whitridge*, *supra*, stated (at page 145):

> "It was objected that some of the facts which we have mentioned were not proved in the case, but they are public facts, and when we are asked to declare that the Secretary exceeded his power we have to consider what might have been before his mind."

It is interesting to note that the interpretation of section 522(c) as authorizing the certification of more than one rate, notwithstanding the use of the singular term "rate", follows the precedent of the Treasury Department with respect to the interpretation of section 522(a). Although section 522(a) provides that "the value of foreign coin . . . shall be that of the pure metal of such coin of standard value" and that "the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury", the Secretary has, in order to meet the new conditions which

have arisen since 1921, proclaimed the values not of "foreign coins" but of "foreign monetary units".[23]

See *Amalgamated Textiles* v. *United States*, 84 Fed. (2d) 210, 24 C.C.P.A., Customs 74, T. D. 48378 (1936);

J. S. Staedtler Inc. v. *United States*, 25 C.C.P.A., Customs 136, T. D. 49255 (1937).

As early as *Cramer* v. *Arthur*, *supra* (1880) this Court accepted the interpretation by the Secretary of the Treasury of the provisions of the 1873 Act corresponding to those now contained in section 522(a), that the specific provision therein directing that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint and proclaimed on the 1st day of January by the Secretary of the Treasury," permitted him to proclaim the value of a "standard money of account" (based on coin). This Court stated (at page 616 of the *Cramer* case) that "Whether represented by a corresponding coin of equal amount is of no consequence."

If section 522(a) did not permit such an interpretation by the Secretary of the Treasury in the circumstances of today, when there are few, if any, standard coins in circulation which represent the foreign currencies to be

[23] On October 1, 1930, (T. D. 44255), the Secretary of the Treasury changed his former practice of proclaiming "the values of pure metal contents of foreign coins", T. D. 38770, July 1, 1921, to proclaiming "the values of foreign monetary units". A similar change in the subtitle of Treasury Circulars was made on July 1, 1932 (T. D. 45775), and the former subtitle of "VALUES OF FOREIGN MONEYS" was changed to read "VALUES OF FOREIGN MONETARY UNITS (at par as regards gold units; non-gold units have no fixed par with gold)". The practice of the Treasury Department in proclaiming other than metallic values has continued without interruption at least from April 1, 1930 to the present time. T. D. 42618, e. g. T. D. 44117, T. D. 48552, T. D. 50125, T. D. 50544.

valued, paragraph (a) of section 522 would be a nullity, or largely a nullity. Without a similarly broad interpretation of section 522(c) in the light of conditions which have arisen since 1921, the purpose of that section cannot be accomplished.

POINT II

Upon the facts in this case the Federal Reserve Bank of New York was authorized by section 522(c) of the Tariff Act of 1930 to determine and certify to the Secretary of the Treasury two rates for pounds sterling.

It is submitted that the opinion of the United States Court of Customs and Patent Appeals misinterprets the facts relating to the control of foreign exchange in effect in Great Britain on May 3, 1940 and the nature and function of foreign exchange.

The fact is that the control, established by the Government of the United Kingdom, in respect of foreign exchange payable in pounds sterling (including cable transfers) resulted in transactions in such foreign exchange in the New York market at two different basic rates.[24] Because of the laws of Great Britain, foreign exchange payable in pounds sterling could be purchased on May 3, 1940 in the New York market not only at the "Official" rate but also at the "Free" rate (R. 68-69, 73-74). The so-called "Official" rate was the rate fixed by the British authorities. It was the dollar price per pound sterling at which foreign exchange, payable in pounds sterling deliverable only by the Bank of England or its agents authorized for the purpose, could be purchased in the New York market. (See Exh. 1 to 5 inclusive, R. 92-128, offered R. 41-42) The

[24] See Southard, *supra*, Note 2, pp. 76-77, Appendix, pp. iii-iv.

other rate in the New York market was the free market price per pound sterling for foreign exchange payable in pounds sterling deliverable by a bank, or other holder, in Great Britain whether or not an "authorized agent". The appellation "Official" is merely a term in general use to distinguish that rate from the "Free" rate. In the case of either rate, the exchange purchased in New York was an order to a bank or other holder in Great Britain to pay pounds sterling to or upon the order of the British exporter, and the pounds proceeds of such exchange in the form of credits in Great Britain, or in the form of actual pounds sterling currency (i.e. paper or coin currency), were so paid in Great Britain in payment of the sales price of the exported merchandise (R. 66-67, 73-74).[25]

Foreign exchange so purchased on the free market could be used in making payment of the purchase price of all exports from Great Britain to the United States except five specified categories of merchandise. Foreign exchange so purchased on the New York market at the higher "Official" rate (or United States dollars) was required to be used in making payment for any of these five specified categories.

The Court of Customs and Patent Appeals referred to the "Official" rate as "*the all-inclusive* buying rate of pounds". However, under the British regulations in effect on May 3, 1940, all the unspecified categories of merchandise (including the merchandise in the case before the Court) were purchasable with pounds sterling acquired at the "Free" rate; and, so long as this was permitted under the regulations, such merchandise as a practical matter undoubtedly was paid for with pounds purchased at the "Free" rate (or with United States dollars) since the "Free" rate was the lower rate. Only if there was an

[25] See Southard, *supra*, Note 2, pp. 76-77, 188-189, Appendix pp. iii-vi.

inadequate supply of pounds sterling exchange available at the "Free" rate would pounds sterling exchange be bought in the New York market at the "Official" rate to pay for such merchandise; and the fact that on May 3, 1940, the "Free" rate was approximately 56 cents below the "Official" rate of $4.035 would indicate that an adequate supply of pounds sterling exchange was, in fact, available at the "Free" rate. Therefore, the only meaning consistent with the facts that can be ascribed to the reference by the Court of Customs and Patent Appeals to the "Official" rate as "*the all-inclusive* buying rate of pounds" is that it may be theoretically possible for an importer to have used pounds sterling, purchased at the higher "Official" rate, in making payment for merchandise exported to the United States notwithstanding that such merchandise was lawfully and freely purchasable by means of exchange acquired at a lower rate,[26] just as it is theo-

[26] Even in this sense there is in the New York market no "all-inclusive" buying rate for foreign exchange payable in the currency of certain foreign countries (including Argentina, Brazil, Chile, and Uruguay) with respect to which dual or multiple rates exist. For example the foreign exchange control laws and regulations of Brazil require that, in connection with every export into the United States from Brazil, there shall be surrendered to the exchange control authorities in Brazil, in the form of sight draft drawn on New York payable in United States dollars (or any acceptable exchange payable in other than Brazilian currency), a prescribed portion of the value of the export, against receipt of Brazilian milreis (since October, 1942, "cruzeros") at a prescribed "Official" rate. The balance of such dollar (or other acceptable) exchange may be sold in the open market in Brazil at a "Free" rate. ("COMMERCE REPORTS Weekly Containing Foreign Trade News", Bureau of For. and Dom. Commerce, U. S. Dept. of Commerce, April 15, 1939, No. 15, page 346; the relevant excerpt is set forth in the Appendix p. ix; see also Appendix p. viii) The United States importer is therefore required to pay in Brazil the purchase price of the imported merchandise in United States dollars in the form of exchange payable in United States dollars (or with other acceptable exchange). Hence, the United States importer cannot in any case use the foreign currency, or credits in the foreign currency, purchased in the form of foreign exchange in New York, in payment for his imported merchandise.

retically possible for a buyer, if he is foolish enough to do so, to pay $2 or more for merchandise freely offered at $1. The theoretical possibility of such an unrealistic payment has no direct or indirect bearing upon market values.

Similarly, if it be conceded that "anything in Great Britain could be purchased" with actual pounds sterling currency (as distinguished from bank deposits or other credits) constituting the proceeds of foreign exchange purchased at the "Official" rate, that fact is entirely irrelevant in the interpretation of section 522(c) in view of the fact that all categories of merchandise, except the five specified categories, could be purchased for export from Great Britain to the United States by means of pound sterling exchange, or actual currency constituting the proceeds of such foreign exchange, purchased at the lower "Free" rate.

If, as stated by the Court of Customs and Patent Appeals, there is only "one standard of currency in Great Britain", this is so only with respect to actual currency (paper currency and coins). (R. 75) This is entirely immaterial. Section 522(c) deals essentially with orders in the form of cable transfers pertaining to foreign currency credits. It is the different attributes and prices of such orders and credits that are material to section 522(c), not the attributes and prices of actual foreign paper currency and coins. Moreover, neither the "Free" rate nor the "Official" rate of foreign exchange payable in pounds sterling has anything to do with pounds sterling paper or coin currency available outside of Great Britain.[27] Those rates are for orders given by cable with respect to pounds sterling credits and are based upon a mere right or privilege which a bank or another has outside of Great

[27] Southard, *supra*, Note 2, pp. 76-79, Appendix pp. iii-iv.

Britain to direct a bank or other party within Great Britain to pay or credit pounds to, or upon the order of, another (the British exporter).[28]

If it were held that there is only one standard of currency in Great Britain, that would not militate against the fact that there are nevertheless several measures of the value of such currency. It is the value of orders from New York to Great Britain in the form of foreign exchange that is prescribed in section 522(c) as a measure of the value for the assessment and collection of customs duties. In fact section 522 expressly provides two separate and different measures of value of the pound sterling for use, pursuant to the section, in the assessment and collection of import duties, namely, the pure metal value (mint par) in section 522(a), and the foreign exchange rate in section 522(c); the two values to be used alternatively, the former when the difference in the two values is less than 5% and the latter when the difference is 5% or more. Ever since the 1799 Act, these two different measures of value—the value of the metal content of the foreign coin, and the depreciated value of the currency measured by the rate for foreign exchange payable in such currency — have been used in the computation of dutiable values in dollars. Foreign currency has other measures of value, though none of them are relevant in the interpretation of section 522. The courts have recognized that there are always at least three separate values, or measures of value, of every foreign currency, namely, (1) the value of the pure metal, of the standard coin of the currency, as required by the law of the foreign country (the mint par or statutory content); (2) the value of the pure metal of the average standard coin in circulation (the statutory content having been diminished by abrasion, see *The Collector* v. *Richards*, *supra*); and (3)

[28] See Southard, *supra*, Note 2, p. 86, Appendix p. v.

the foreign exchange value. Under particular conditions there might well be several other values in United States currency for a single foreign currency. Thus there might be one value when stated in United States gold and another when stated in United States silver (*Hadden* v. *Merritt*, 115 U. S. 25 at page 26) (1885) or in United States paper currency, or different values of a single foreign currency determined from its mint par based on gold, its mint par based on silver, or its paper currency (*United States* v. *Klingenberg*, 153 U. S. 93 (1894); *United States* v. *Whitridge*, *supra*).

The effects of the laws of supply and demand, and other factors,[29] which are always present, now far outweigh if they do not actually eliminate any effect on the rates of foreign exchange caused by the metal value of foreign coins. It is true that when a currency is freely redeemable in gold and there are no restrictions upon foreign exchange or the shipment of gold, the rate of foreign exchange is largely based upon the gold content of the coins. However, the court will take judicial notice of the fact that such conditions of free redemption and transfer exist nowhere in the world today, nor did they in 1940.

It does not appear from the facts in this case, or otherwise, that the certification of two rates for pounds sterling, or the certification of such number of rates as may exist at any one time in the New York market for any foreign exchange used in payment for merchandise imported into the United States from a single foreign country, would result, as the Court of Customs and Patent Appeals stated, in "confusion worse confounded". It would appear to be a completely practicable procedure to have the importer state on the invoice of the imported merchandise the rate

[29] Southard, *supra*, Note 2, pp. 35, 86, Appendix pp. ii-iii, v

paid by the importer for the foreign exchange used in making payment of the invoice price. Like the importer's statement of value, the rate used, and its applicability to the merchandise covered by the invoice, would be subject to checking by the Collector.

In *Cramer* v. *Arthur*, *supra*, this Court stated ". . . invoices, exhibiting the actual transactions, and capable of being verified by oath, are essential instrumentalities in the prevention of fraud; and, in the absence of suspicious circumstances, usually furnish the basis for estimating the actual values of the goods." (p. 618)

Such information as may be needed, in order to determine with reasonable and practicable certainty which of two or more rates certified for the currency of an invoice applies to the particular merchandise covered by the invoice, can be obtained by the Treasury Department from appropriate sources. In fact, the record shows that the Government already has its own sources of information of this character through Treasury Department, consular, and diplomatic representatives throughout the world (R. 80, 84-85).

Application of the opinion of the Court of Customs and Patent Appeals would require the use in all cases of a dollar value of foreign currency fixed by the foreign country of export at any figure, however arbitrary. Such a rate would be similar to the "Official" rate, which for most categories of merchandise imported from Great Britain in May 1940 results in a dollar value entirely unrelated to the true dollar value of the imported merchandise. This would be in principle a reversion to the fixed values of foreign currencies which the Congress has constantly striven to avoid ever since the statute of 1799 first provided a method for the more accurate valuation of depre-

ciated foreign currencies and consequently the more accurate ascertainment or approximation of market values of imported merchandise purchased therewith.

The position of the United States Court of Customs and Patent Appeals is essentially that because under present world conditions there is some degree of difficulty in ascertaining the exact dollar values of imported merchandise, or because it is impossible to ascertain them exactly in all cases, the whole effort of the Congress throughout its entire tariff history to ascertain such values, or to approximate them as nearly as practicable, should be disregarded where dual or multiple rates exist, and a single rate of exchange used although it is known that this will not result even in an approximate dollar value of many categories of imported merchandise.

The terms of section 522(c) refer to the rate in the New York market. When, as in this case, there are in fact two distinct rates in that market for the currency of a single foreign country, how can one of such rates properly be selected for certification to the exclusion of the other? A proper interpretation of the statute in such circumstances clearly depends upon the intent and purpose of Congress. As pointed out above (POINT I) the purpose and intent of the section is to determine more accurately the dollar market value of the imported merchandise. The determination of such true dollar values of merchandise imported from Great Britain in May 1940 in turn required the use of the two rates of exchange by means of which the various categories of merchandise could be respectively purchased. It follows that the certification by the Federal Reserve Bank of New York of the two rates for pounds sterling was appropriate.

Whether it be considered that (1) there were two rates

for the pound sterling, or (2) that the pound sterling, though a single currency, was so regulated by British laws as to create two classifications thereof having different attributes and values, or (3) that, because of the two rates at which foreign exchange payable in pounds sterling was purchasable, there were, for the purposes and within the meaning of section 522 of the Tariff Act, two separate and distinct pound sterling currencies, is (as shown in POINT I hereof) immaterial in carrying out the intent and purpose of that section.

In order to give effect to the purpose and function of section 522(c) in the circumstances existing on May 3, 1940, the section must be interpreted as authorizing the Federal Reserve Bank of New York to certify to the Secretary of the Treasury on that day the two rates of $4.035000 "Official" and $3.475138 "Free" for pounds sterling.

POINT III

The rate or rates for foreign exchange payable in currency of a single foreign country determined and certified by the Federal Reserve Bank of New York, pursuant to section 522(c) of the Tariff Act of 1930, are final and conclusive and not subject to judicial review.

Both parties to this case agree that a series of decisions by this Court establishes the principle of law that appropriate executive action taken in a manner which on its face conforms to the provisions of section 522 of the Tariff Act of 1930 is final and conclusive and not subject to judicial review. The Customs Court held that the statute authorized the certification of more than one rate in ap-

propriate cases and that the action of the Federal Reserve Bank of New York in determining and certifying two rates for pounds sterling pursuant to section 522(c) was final and conclusive. It also held that the action of the Secretary of the Treasury in selecting the "Official" rate to be used by Collectors of Customs in converting pound sterling costs into dollars in all cases was without effect. The Court of Customs and Patent Appeals held, on the other hand, that the action of the Secretary of the Treasury in selecting the "Official" rate was binding and conclusive, and stated in effect, by way of dictum, that the statute authorized the Federal Reserve Bank of New York to certify only one rate.

In agreeing with the Customs Court that the action of the Federal Reserve Bank of New York in determining and certifying the two rates for pounds sterling was final and conclusive and not subject to judicial review, it is not necessary to express any opinion upon the question of whether the action of the Secretary in selecting the "Official" rate for use in all cases, to the exclusion of the "Free" rate, was ineffective as held by the Customs Court, or was binding and conclusive as held by the Court of Customs and Patent Appeals.

The case of *Cramer* v. *Arthur, supra*, is the leading case establishing that rates of foreign exchange determined by an executive agency of the United States Government pursuant to Federal statute, for use in the assessment and collection of customs duties, are final and conclusive and not subject to judicial review. That case is strikingly analogous in its facts to the case at bar, and has been consistently followed. It was a suit against the Collector of the Port of New York to recover duties alleged to have been illegally exacted by reason of the Collector's refusal to liquidate the duties on the basis of the depreciated value

claimed by the plaintiff for the Austrian paper florin, the currency in which the imported merchandise had been purchased. The consular certificate attached to the invoice showed that the Austrian paper florin was depreciated and stated the depreciated value in terms of United States currency. The Collector assessed the duties on the basis of this value and the plaintiff brought suit against the Collector to recover back the duties alleged to have been overcharged. He sought to prove by extrinsic evidence that the actual value of the Austrian paper florin was less than the depreciated value certified by the consul. The Circuit Court of the United States refused to go behind the certificate of the consul and plaintiff appealed. This Court affirmed the judgment of the Circuit Court and held that the certificate of the consul as to the value of the depreciated currency was conclusive. The Court stated (at page 619):

> "In the estimation of the value of foreign moneys for the purpose of assessing duties, there must be an end to controversy somewhere. When Congress fixes the value by a general statute, parties must abide by that. When it fixes the value through the agency of official instrumentalities, devised for the purpose of making a nearer approximation to the actual state of things, they must abide by the values so ascertained. If the currency is a standard one, based on coin, the Secretary's proclamation fixes it; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these and allow an examination by affidavits in every case would put the assessment of duties at sea. It would create utter confusion and uncertainty. If existing regulations are found to be insufficient, if they lead to inaccurate results, the only remedy is to apply to the President, through the Treasury Department, to change the regulations."

Accord *United States* v. *Bush & Co.*, 310 U. S. 371, 379 (1940).

Similarly it has been consistently held that the metallic value of foreign coin estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, as provided in the tariff acts, is conclusive and binding and that evidence is not admissible to impeach the rate so determined and proclaimed.

Hadden v. *Merritt*, *supra*;

United States v. *Klingenberg*, *supra*;

Amalgamated Textiles v. *United States*, *supra*;

J. S. Staedtler, Inc. v. *United States*, *supra*;

See *Cramer* v. *Arthur*, *supra*.

The rule applies equally to two rates for the currency of a single country. In the *Klingenberg* case, the Secretary of the Treasury had proclaimed simultaneously two values for the Austrian florin—one for the gold florin and the other for the silver florin (with a notation: "Silver, the nominal standard; paper, the actual standard, the depreciation of which is measured by the gold standard".) (153 U. S. 93, at page 99)

The Federal Reserve Bank of New York became by statute the immediate successor to the United States consul in determining and certifying the rates for conversion of depreciated foreign currencies. The regulation made by the President through the Secretary of the Treasury under earlier acts (beginning with the Act of March 2, 1799, c. XXII, sec. 61, 1 Stat. 673, providing that the rates for conversion of depreciated currencies should be certified by the consul in the country in question) was superseded by

the Tariff Act of 1921 (Act of May 27, 1921, c. 14, sec. 403(a), 42 Stat. 17) which substituted the Federal Reserve Bank of New York for the consul to determine and certify to the Secretary of the Treasury the foreign exchange rates for currencies for use in the collection and assessment of customs duties.

The Federal Reserve Bank of New York was created by Act of Congress (Federal Reserve Act of December 23, 1913, ch. 6; 38 Stat. 251,); it acts under the supervision and regulations of the Board of Governors of the Federal Reserve System which is composed exclusively of officers of the United States appointed by the President by and with the advice and consent of the Senate (Federal Reserve Act, sec. 10; 12 U.S.C., §241); and it performs numerous functions of the United States Government. For example, it issues currency of the United States, including Federal Reserve Notes, which are obligations both of the bank and of the United States (Federal Reserve Act, sec. 16; 12 U.S.C., §411), and acts as depositary and fiscal agent of the United States (Federal Reserve Act, sec. 15; 12 U.S.C., §391). The function of determining and certifying rates of foreign exchange for use in the assessment and collection of customs duties is another instance where the Federal Reserve Bank is acting in performance of a governmental duty in aid of the administration by the United States Government of one of its primary executive functions, namely, the collection of customs duties.

It would seem clear that the performance of the duty imposed upon the Federal Reserve Bank of New York by section 522(c) involves the exercise of a greater, rather than a less, measure of skill, judgment and discretion than the function of the Director of the Mint, under section 522(a), in estimating the values of foreign coins which are arrived at by arithmetical computations based on the pure

metal values of such coins. This court said in *Hadden* v. *Merritt*, *supra*, as to the determination of the value of foreign coins (at page 27): " . . . the duty of ascertaining and declaring their value . . . is the performance of an executive function, requiring skill and the exercise of judgment and discretion . . . "

The terms of section 522(c) expressly permitting the Federal Reserve Bank of New York "in its discretion" to "take into consideration" collateral factors in determining the rates show that Congress knew that determination and certification of the market buying rate was not merely ascertaining and certifying a clearly established figure or one derived from a simple mathematical calculation. Congress delegated the function to the Federal Reserve Bank of New York realizing that it had the necessary technical knowledge, experience, and sources of information including its member banks and other dealers in foreign exchange, to discharge the duty imposed by the statute.

Since the Court in the case of *Cramer* v. *Arthur*, *supra*, refused to question the rate certified by the United States consul it follows that the rates certified by the Federal Reserve Bank of New York in performance of precisely the same function for precisely the same purpose, namely, the assessment and collection of customs duties, are not subject to judicial review.

CONCLUSION

The Federal Reserve Bank of New York was authorized to certify to the Secretary of the Treasury more than one rate for the currency of a foreign country in appropriate cases in which more than one such rate actually exists and its action in so doing in this case is not subject to judicial review.

Respectfully submitted,

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Attorney for Federal Reserve Bank
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Rufus J. Trimble
LYON BOSTON
of Counsel.

New York, December 6, 1944.

Appendix

Section 522, Chapter 497, Title IV of the Tariff Act of 1930, 46 Stat. 739 (31 U. S. C. A., sec. 372). This statute reads as follows:

"(a) Value of Foreign Coin Proclaimed by Secretary of Treasury.—Section 25 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' as amended, is reenacted without change as follows:

"'Sec. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year.'

"(b) Proclaimed Value Basis of Conversion.—For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of the enactment of this Act, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of section 25 of such Act of August 27, 1894, as amended, for the quarter in which the merchandise was exported.

"(c) Market Rate When No Proclamation.—If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation,

conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the purpose of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal Reserve Bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions, and quotations in demand or time bills of exchange."

Excerpts from:

"Foreign Exchange Practice and Policy", Frank A. Southard, Jr., McGraw-Hill Book Company, Inc., New York and London, 1940:

(page 29):

CHAPTER II

THE FUNCTIONS AND MARKETS OF FOREIGN EXCHANGE

* * * * *

(page 35):

The Foreign Exchange Market

"Foreign exchange is bought and sold by a diversity of persons and institutions in a nation-wide 'open' or 'over-the-counter' market. If gov-

ernments leave foreign exchange trading in private hands the transactions ordinarily converge upon the principal financial centers and will be carried on chiefly by the large international banks. When foreign exchange is a government monopoly the market immediately becomes highly centralized, although as a result of the restrictions bootleg or illegal trading frequently develops. In the United States foreign exchange trading is not materially regulated by the government. Consequently the market is 'free' in that supply and demand are virtually unrestricted in the determination of exchange rates.

"The rate-making forces are the subject of the next chapter. It is necessary here to call attention to the rather obvious fact that in the United States there is at all times both a demand for foreign exchange and a supply of foreign exchange. * * *"

(page 36):

"In the United States, New York City is the principal center of foreign exchange operations. * * *"

(page 75):

CHAPTER III

FOREIGN EXCHANGE RATES

* * * * *

(pages 76-77):

Foreign Exchange Rates Described

"*Exchange Rates as Prices.*—Foreign exchange rates may be defined as prices at which foreign exchange is bought and sold. They are the prices which indicate how many dollars an American importer will have to pay his bank for a £1,500

sight draft to settle his account in England; or the number of dollars an American cotton exporter will receive for the 200,000-franc draft he has drawn on his French customer. Just as is the case with commodity prices, foreign exchange rates are to varying degrees competitively determined—or, more accurately, competition in the determination of foreign exchange rates approximates 'perfection', as conceived by the Marshallian economist, in varying degrees. The pound sterling-dollar rate is highly competitive, although among the supply or demand factors will appear, from time to time, the exchange stabilization funds of the two countries concerned. At the other extreme, a government may monopolize the supply of foreign exchange and more or less arbitrarily fix the price at which it will be sold or allotted to buyers.

"*Typical Quotations.*—* * *

"In the first place the discussion in Chap. II should be recalled to remind us that the foreign exchange market is more closely akin to the over-the-counter securities market than it is to such an organized trading place as the New York Stock Exchange. * * *"

(page 79):

"In the second place, all these rates quoted in the New York market are for foreign exchange and not for actual currency. It is obvious that in the United States the market problem is that of agreeing on prices in *dollars* at which *foreign exchange* may be bought or sold. Sterling, franc, yen, lira rates are quoted in our foreign exchange markets; while in foreign countries dollar and other exchanges will be dealt in. * * *"

Appendix

(page 86):

Determination of Exchange Rates

"Thus far the chapter has been concerned with the structure of foreign exchange rates. It has been asserted that the basic rate is that for cables and that on this rate the demand and time rates are built. How, then, are the rates for cables and for closely related demand or sight exchange determined? The answer is that from day to day they are set by the interaction of the supply of exchange and the demand for exchange, but underlying these continually shifting daily rates are the fundamental forces which give rise to and govern supply and demand in the foreign exchange market. * * *"

(pages 188-189):

"*Dual and Multiple Exchange Rates and Exchange Rationing.*—There have been many instances in monetary history where, with the foreign exchange value of a country's currency pegged at an overvalued rate, illegal trading has given rise to one or more so-called 'black' rates. This has happened frequently, for example, in Soviet Russia. In such countries there are, *de facto*, dual or multiple exchange rates, but one cannot consider them dual-rate foreign exchange *policies* so long as the unofficial trading is illegal.

"Recent years, however, have seen the development of clearly expressed foreign exchange policies by which countries maintain an *official* foreign exchange rate—or, often, both an official buying and an official selling rate—and one or more 'discount' rates at which the home currency is quoted at some degree of depreciation from the official rate or rates. Where, as in Argentina, Chile, or Brazil, only two rates are legally recognized, an official rate and a free-market rate, it is convenient to speak of a dual-rate policy. When, as in Germany,

a number of discount rates are legally recognized along with *the* official (or least depreciated) rate, the foreign exchange policy is one of multiple rates. * * *"

Excerpts from:

"Commercial Pan America—A Monthly Review of Commerce and Finance", Volume X, Nos. 9 and 10, September and October, 1941, Ezekiel Mordecai (page 374):

"The term 'exchange control' is used generally to describe those various systems by which governments regulate the volume of transactions at an official rate of exchange. Techniques used in the southern countries imposing exchange control vary widely and are usually accompanied by direct controls of exports and imports. In general, exchange control, as it operates in the thirteen countries (in the Americas) where it is in effect is neither so complex nor so severe as similar systems in Europe. A 'free market' is usually permitted where exporters may sell a certain portion of their proceeds from foreign sales at rates higher than official rates. Exchange may be obtained on the 'free market' for transactions not authorized at the lower official rates . . . Not only do the exchange control systems of the various countries where such are in force differ widely, but policies within each country change with bewildering rapidity."

It will be noted that the "free market" here referred to is the exporter's market for his dollar exchange. In the case of a British exporter, he would normally receive more pounds sterling per dollar than at the "Official" rate, i.e., the dollar price of the pound in the "Free" market is lower than the "Official" rate.

Appendix

Excerpt from House Document No. 15, 76th Congress, 1st Session, Twenty-second Annual Report of the United States Tariff Commission (1938) Pursuant to section 332 of the Act of Congress Approved June 17, 1930 (46 Stat. 698).

On page 1 of the "Introduction and Summary", after mentioning the British Protective Tariff of 1932, the report states:

> "In Germany and other central European countries, in southern and eastern Europe, and in Latin America, licensing systems, exchange controls, clearing and compensation agreements followed in rapid succession. * * * All of these developments have affected the foreign trade of the United States."

Excerpts from "Regulation of Tariffs in Foreign Countries by Administrative Action", United States Tariff Commission Report to Committee on Ways and Means, House of Representatives (1934).

On pages 1 and 2 of the "Introduction" the report states:

> "Restrictive measures other than tariffs
>
> In addition to tariff duties import trade has been restricted or controlled by other measures, such as import quotas or prohibitions; import restrictions with or without a system of licenses; import monopolies; foreign exchange control; milling or mixing regulations; and increased fees and restrictive regulations of various kinds. Import quotas and exchange control measures may be even more restrictive trade barriers than tariff rates. * * *
>
> Restrictions on foreign exchange transactions are applied in many countries, almost necessarily by the Executive. In several European and Latin American countries control of foreign-exchange

transactions is officially exercised through the central banking system. Among the countries applying restrictions for control of foreign exchange are:

Argentina	Czechoslovakia	Latvia
Austria	Denmark	Norway
Bolivia	Ecuador	Paraguay
Brazil	Estonia	Spain
Bulgaria	Greece	Turkey
Chile	Germany	Uruguay
Colombia	Hungary	Yugoslavia
Costa Rica	Italy	

The section under the heading "Brazil", on pages 5 and 6 of the report, reads as follows:

"BRAZIL

"The Executive of the post-revolutionary government specifically assumed power over the tariff under decree no. 20,280 of September 8, 1931. Since then the executive of this government by decree has exercised the following functions with respect to the tariff: (1) Establishment of 'minimum' and general rates; (2) changes in the method of applying the existing tariff in such a way as to affect rates; (3) changes in individual classifications and rates; (4) negotiation, conclusion, and enforcement of a limited number of commercial agreements so as to affect a few individual rates; (5) prohibitions and licensing affecting the importation of a limited number of articles; (6) preparation of a complete tariff revision (promulgated June 11, to be put into effect September 1, 1934).

"Foreign exchange restrictions affecting imports have been in effect in Brazil since September 1931.

"Quota restrictions have not been imposed on imports into Brazil up to the present."

Appendix

Excerpts from:

"COMMERCE REPORTS — Weekly Containing Foreign Trade News", Bureau of Foreign and Domestic Commerce, United States Department of Commerce, April 15, 1939, No. 15 (page 346):

"BRAZIL—*New Exchange Regulations.*

"On April 8 the President of Brazil signed decree law No. 1201, effective April 10, establishing new exchange regulations, according to a cable received from the American Embassy at Rio de Janeiro. With a few variations, the new system appears to provide for payment of imports in about the same manner as the previous system which prevailed from February 1935 to November 1937.

"The text of the new decree law is as follows:

"Article 1.—Freedom of exchange operations is reestabliished within the terms of the present decree law.

"Article 2.—Export drafts, as well as values transferred from abroad, will be sold freely to banks established in this country that are authorized to conduct exchange operations.

"The bank control will supply export permits only upon presentation of proof by the exporter showing that the respective exchange has been sold in accordance with the terms of this decree law.

"Article 3.—Banks purchasing export drafts are obliged to sell to the bank of Brazil, in sight drafts on London or New York, in accordance with the official rate established daily, and in money of international acceptance, 30 percent of the amount of each bill of exchange purchased.

" . . . "

SUPREME COURT OF THE UNITED STATES.

No. 287.—October Term, 1944.

John Barr, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Court of Customs and Patent Appeals.

[February 5, 1945.]

Mr. Justice Douglas delivered the opinion of the Court.

The question in this case is the proper rate at which the currency of the invoice of imported goods should be converted into United States dollars under § 522(c) of the Tariff Act of 1930. 46 Stat. 739, 31 U. S. C. § 372(c).

On May 13, 1940, petitioner imported into the United States at the port of New York certain woolen fabrics which had been exported from England on May 3, 1940. Payment for the merchandise was made with pounds sterling purchased through the Guaranty Trust Co. of New York in the New York market for cable transfer. The Collector of Customs converted the pounds sterling of the invoice into dollars at the "official" rate of exchange of $4.035. Petitioner claimed that the currency of his invoice should have been converted at the "free" rate of exchange of $3.475138. He paid the higher rate and filed his protest against the Collector's action under § 514 of the Tariff Act of 1930. The Customs Court sustained the protest. 79 Treas. Dec., No. 7, 14. The Court of Customs and Patent Appeals reversed. 143 F. 2d 132. The case is here on a petition for a writ of certiorari which we granted because of the importance of the questions presented.

The "free" rate and the "official" rate have the following origin.

Sec. 522(a) of the Tariff Act provides that the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value, and that it shall be estimated quarterly by the Director of the Mint and proclaimed by the Secretary of the Treasury. The value of the pound sterling at all times relevant here was proclaimed to be $4.2397. Sec. 522(b) provides that for the purpose of assessment and collection of duties upon merchandise imported into the United States foreign currency shall be converted, wherever necessary, into currency of the United States at the values proclaimed by the

Secretary under § 522(a) for the quarter in which the merchandise was exported. Sec. 522(b) provides, however, for an exception. That exception is contained in § 522(c) which reads as follows:

> "If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange."

At all times prior to March 25, 1940, the Federal Reserve Bank of New York pursuant to its authority under § 522(c) certified daily to the Secretary of the Treasury one buying rate for the pound sterling. When the present war between Great Britain and Germany was declared, the British Government inaugurated a detailed system for controlling foreign exchange. It required among other things that all persons resident in the United Kingdom sell to the British Treasury at prices fixed by it all foreign currency which they were entitled to sell, and prohibited, with certain exceptions, exportation of foreign currency from the United Kingdom and the purchase and sale of foreign currency in the United Kingdom from or to any person other than an authorized dealer and at prices fixed by the British Treasury. On March 7, 1940, an Order in Council, effective March 25, 1940, was issued by the British Government which provided that certain classes of merchandise[1] (whiskey, furs, tin, rubber and jute) might not be exported from the United Kingdom to the United States and certain other countries except when payment had been or would be made to persons resident in the United Kingdom in specified currencies. These currencies included United States dollars or English pounds

[1] Subsequent to the exportation of the merchandise involved in the present case this Order was amended, effective June 10, 1940, to include goods of any class or description.

purchased in the United Kingdom after September 3, 1939, from an authorized dealer in foreign currency. Authorized dealers sold English pounds only at the rate of $4.035, prescribed by the British Treasury, from January 8, 1940, to September 30, 1942, when the present case was tried.

On March 19, 1940, the Federal Reserve Bank of New York notified the Secretary that because of the order of the British Government of March 7, 1940, it would certify, beginning March 25, 1940, two rates for the pound sterling—one to be designated as the "free" rate, the other as the "official" rate. The latter was the rate fixed by the British Treasury. On April 15, 1940, the Secretary of the Treasury notified the collectors of customs that until further notice he would publish only the "official" rate; and he directed them to use that rate for assessing and collecting duties on imported merchandise whenever it varied by more than 5 per cent from the value of the pound proclaimed by the Secretary under § 522(a) of the Act.[2] T. D. 50134, 75 Treas. Dec. 370, 371, 5 Fed. Reg. 1447.

On the date petitioner exported his merchandise from England, the Federal Reserve Bank of New York certified to the Secretary of the Treasury that at noon on that day the "free" rate for the English pound was $3.475138 and the "official" rate was $4.035. The Secretary, in accordance with his notification of April 15, 1940, to the collectors of customs published only the "official" rate. T. D. 50146, 75 Treas. Dec. 388. Since the "official" rate varied by more than 5 per cent from the proclaimed value of the pound for that quarter, the collector used the "official" rate in converting pounds into dollars for the purpose of assessing and collecting duties upon the value of the woolen fabrics. The pounds sterling which petitioner used in the purchase of the woolens were not obtained from an authorized dealer as defined in the British order of March 7, 1940, but, as we have noted, through the Guaranty Trust Co. of New York in the New York market for cable transfer. Petitioner claims that the invoice currency should have been converted at the "free" rate of $3.475138 as determined and certified by the Federal Reserve Bank of New York for the date of this exportation.

It was noted in *United States* v. *Whitridge*, 197 U. S. 135, 142, that the assessment of an *ad valorem* tax on imports involved an ascertainment of the true value of the article taxed as of the date of the tax and that the invoice price was an approximate measure-

[2] As we have noted the value of the pound sterling at all times pertinent to this case was proclaimed to be $8.2397.

ment of that value. As pointed out in that case, the history of the statutes shows a closer approximation to that value as the legislation has evolved. And the enactments made subsequent to the decision in the *Whitridge* case are consistent with that trend. In the beginning Congress prescribed specific dollar values of specified coins. Act of July 31, 1789, § 18, 1 Stat. 29, 41. Not long after, the President was given authority to prescribe regulations for computing duties on imports where the original cost was exhibited in a depreciated currency of a foreign government. Act of March 2, 1799, § 61, 1 Stat. 627, 673. In 1873 Congress provided for an annual estimate by the Director of the Mint of the full metal value of standard coins of the various nations and a proclamation of the value by the Secretary of the Treasury. Act of March 3, 1873, 17 Stat. 602. That estimate was required to be made quarterly rather than annually by the Act of October 1, 1890, § 52, 26 Stat. 567, 624. Then came the Act of August 27, 1894, § 25, 28 Stat. 508, 552, which retained the provision for the estimate and proclamation of metallic values and gave the Secretary of the Treasury power to order a reliquidation at a different value on a showing that the value of the invoice currency in United States currency was 10 per cent more or less than the proclaimed value. *United States* v. *Whitridge, supra.* The procedure under the latter provision depended on a consular certificate to establish the percentage of depreciation of the currency. T. D. No. 23725, 5 Treas. Dec. 396. There was thus no single source (and none at all in the United States) to which customs officials could look to determine the extent to which foreign currency had depreciated. Moreover, violent fluctuations in foreign exchange rates had occurred after the first World War. It was for those reasons that § 403(c) was added to the Emergency Tariff Act of 1921, 42 Stat. 9, 17. See S. Rep. No. 16, 67th Cong., 1st Sess., p. 16; H. Rep. No. 79, 67th Cong., 1st Sess., p. 12; *Fry & Friedsam* v. *United States*, 12 Cust. App. 486, 489. And § 403(c) of the 1921 Act now appears as § 522(c) of the 1930 Act on whose meaning the present decision turns.

This history makes clear the search which has been made for a measure of the true dollar values of imported merchandise for customs purposes which was accurate (see *Cramer* v. *Arthur*, 102 U. S. 612, 617) and at the same time administratively feasible and efficient. The formula finally selected is dependent on the actual value of the foreign currency in our own money. The rate for the foreign exchange with which the imported goods are purchased is recognized as the measure of value of the foreign cur-

rency; the use of that rate reflects values in United States currency which are deemed sufficiently accurate to serve as the measure of the valuation of the goods for purposes of the *ad valorem* tax. As noted in *United States* v. *Whitridge*, *supra*, p. 144, the actual "unit of cost" conforms with the truth and the meaning of the invoice.

We would depart from that scheme if we read § 522(c) as saying that on a given date only one buying rate for a specified foreign currency could be certified by the Federal Reserve Bank of New York or proclaimed by the Secretary of the Treasury. Dual or multiple exchange rates have resulted in recent years from measures for the control and restriction of foreign exchange and export transactions.[3] In the present case the British Government fixed the "official" rate for the purchase of specified commodities for export. One who purchased woolens for export need not acquire pounds at that rate. A lower rate was available and was indeed taken advantage of by petitioner when he purchased pounds to pay for the woolens. If the higher "official" rate is used in the valuation of the woolens, the cost of the goods will be distorted and an inflated value for customs purposes will be placed upon them. Such a result would be quite out of harmony with the history of these statutes and should be avoided unless the result is plainly required by the language of § 522(c). We do not think it is.

We may assume that the dual or multiple exchange rates which have emerged were not in contemplation when the 1930 Act was passed. As we have noted, they are parts of rather recent measures for the control and restriction of foreign exchange and export transactions. But if Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators. *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 257; *Browder* v. *United States*, 312 U. S. 335, 339, and cases cited. Sec. 522(c) contains no language indicating that the Secretary of the Treasury has any function to perform except the publication of any buying rate which is certified. The determination of the rate is left exclusively to the Federal Reserve Bank of New York. It alone is given discretion in computing it. The duty of the Secretary to publish the certified rate is as clear as the duty of the Federal Reserve Bank of New York to determine and certify

[3] See United States Tariff Commission, Regulation of Tariffs in Foreign Countries by Administrative Action (1934); Twenty-second Annual Report of The United States Tariff Commission (1938) p. 1; Southard, Foreign Exchange Practice and Policy (1940) pp. 185 *et seq.*

it. It is true that § 522(c) speaks only of the "buying rate". And that use of the singular rather than the plural is stressed by respondent. We may note, however, in passing that § 1 of the Revised Statutes, 1 U. S. C. § 1, provides that "words importing the singular number may extend and be applied to several persons or things." Beyond that is the fact that we are construing a provision of a tariff act designed, as we have said, to value imports for customs purposes by means of the buying rate of the invoice currency. The use of the singular is not inappropriate since there is a buying rate for the foreign exchange used to purchase each separate import. We assume that the "official" rate was the all-inclusive rate and could have been used in payment of exported goods of all kinds. But § 522(c) means to us that that buying rate is to be used which is in fact applicable to the particular transaction. To look to other transactions for the buying rate is to make a valuation of a wholly hypothetical import not a valuation of the actual one before the collector of customs. Congress could, of course, choose any standard of valuation, for the purposes of the assessment and collection of duties. But Congress in this situation endeavored to provide a flexible and realistic, not an arbitrary, standard. We can indeed see no difference in principle between the use of one of several rates for the currency of a single country and the use of one of several rates each of which is for the currency of a different country. In each different rates are used to ascertain the value of specific imports. The language of § 522(c) read against the background of these statutes indicates to us that Congress undertook to provide in each case the rate which gives the closest approximation to the value in dollars of the imported merchandise. That purpose would be thwarted if in the circumstances of this case only one buying rate could be used in making the valuation of the goods. The application of the "official" rate to this particular transaction would assume that petitioner imported whiskey, furs, tin, rubber, or jute rather than woolens. The valuation of the woolens would be inflated and a higher duty would be paid than a fair reading of § 522(c) necessitates.

It is said that this result runs counter to the provisions of § 402 of the Act which require that the value of imported merchandise shall be the "foreign value or the export value, whichever is higher". But it is not apparent how that policy need in any way be defeated or impaired by the use of the "free" rate of exchange where it is in fact applicable.

Reliance for the other conclusion is also placed on the general authority given the Secretary over the collection of duties on imports[4] and over collectors of customs.[5] It is also pointed out that § 624 of the Tariff Act of 1930 provides that "In addition to the specific powers conferred by this Act, the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act."[6] But these provisions merely implement authority which is granted the Secretary and make clear the existence of authority which otherwise might be only implied. They may not be used to detract from the express authority given the Federal Reserve Bank of New York under § 522(c). But this result is criticized on the ground that it interferes with the control of foreign exchange, which fiscal function has been entrusted to the Secretary not to the Federal Reserve Bank of New York. It hardly need be pointed out in reply, however, that our decision, like § 522(c), is concerned only with the assessment and collection of duties upon imports through the use of a formula which Congress designed. If the use of that formula under the changed conditions of these war years is disadvantageous or undesirable, Congress, of course, can change it. But we cannot assume that Congress did not mean what it said when it selected the Federal Reserve Bank of New York rather than the Secretary to perform a restricted function on this single phase of the complicated foreign exchange problem.

Nor is there substance in the argument that the Secretary's action in publishing only one of the rates certified by the Bank is non-reviewable. Sec. 522(c) plainly gives discretion to the Bank to determine the buying rate. And for the reasons stated we cannot say that only one buying rate must be determined and certified.[7] The exercise of the Bank's discretionary power under

[4] "The Secretary of the Treasury shall direct the superintendence of the collection of the duties on imports as he shall judge best." Rev. Stat. § 249, 19 U. S. C. § 3. And see Rev. Stat. § 248, 5 U. S. C. § 242.

[5] "The Secretary of the Treasury shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations not inconsistent with law, to be used in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports, or to warehousing, and shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law." Rev. Stat. § 251, 19 U. S. C., Supp. II, § 66. And see Rev. Stat. § 161, 5 U. S. C. § 22.

[6] Sec. 502(e) of the Act provides that "It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs."

[7] The case is therefore different from Collector v. Richards, 23 Wall. 246, in that case the Director of the Mint certified two values of the franc—one

§ 522(c) is in the category of administrative or executive action which this Court held non-reviewable in *Cramer* v. *Arthur*, *supra*, and in *Hadden* v. *Merritt*, 115 U. S. 25, 27-28. And see *United States* v. *Bush & Co.*, 310 U. S. 371, 380. But the function of the Secretary in this regard is purely ministerial and is to be contrasted to other situations in which the Secretary is exercising discretionary authority. Cf. *Boske* v. *Comingore*, 177 U. S. 459. The power to publish the certified rate may not be exercised in such a way as to defeat the method of assessment which Congress has provided. Cf. *Campbell* v. *United States*, 107 U. S. 407. Congress has granted judicial review of the decisions of the collector including the legality of the orders and findings entering into the protested decision. Secs. 514-517. If the decision of the collector contravenes the statutory scheme and disregards rights which Congress has bestowed, the fact that he acts pursuant to the directions of the Secretary does not save his decision from review. *Campbell* v. *United States*, *supra*. We think that the use of the "official" rate of exchange in assessing and collecting duties upon these imports transcended the authority of the collector and of the Secretary and that the "free" rate of exchange certified by the Federal Reserve Bank of New York should have been used.

It is finally said that if more than one buying rate may be made applicable to imports from one country,[8] confusion and complexity in administration of the Tariff Act will result. But that showing would have to be far more clear and the meaning of the Act much more dubious for us to give those administrative considerations weight in the interpretative process.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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under the provisions of the Act of March 2, 1873, 17 Stat. 602, the other under the Act of May 22, 1846, 9 Stat. 14. The Director of the Mint was uncertain whether the latter act had been repealed by the former. The Secretary proclaimed the rate estimated by the Director under the 1873 Act. This Court sustained a collection of duties on that basis, holding that the provisions of the 1873 Act controlled. Thus the decision was that only one value of the franc controlled, not that the power of the Secretary to proclaim the value included the power to choose between two available ones.

[8] It should be noted that where two or more currencies of different character circulate in a foreign country the Treasury has provided for the use of the foreign exchange rate for each, the rate used being the rate for the currency in which the same or similar merchandise is usually bought and sold in the ordinary course of trade. See Customs Regulations of 1937, Art. 776(a) and (e), as amended by Treas. Dec. 50251(i) and (j), October 10, 1940.

Mr. Justice FRANKFURTER, dissenting.

As part of the effective financial conduct of the war, the United Kingdom brought sterling under control by fixing its exchange value. A limited supply of sterling in foreign countries presented a special problem. But though that supply was out of its bounds, Great Britain by various mechanisms could bring it under control. Apparently it moved to do so as quickly as economic and political considerations permitted. See the statement of the Chancellor of the Exchequer on April 9, 1940, in reply to various questions in the House of Commons, 359 H. C. Deb. (5th ser. 1940) 461-463. Thus, while "the vast bulk of transactions between sterling and other currencies" was conducted at the exchange rate fixed by the Government, the supply and demand of sterling abroad created a market. By virtue of various British restrictions this free sterling market became increasingly thin. See 26 Fed. Res. Bull. (July, 1940) 638; The Commercial and Financial Chronicle, April 20, 1940, Vol. 150, Pt. 2, pp. 2478-79. Nevertheless, until the British Government completely clamped down on the use of this free sterling in payment of exports, it was possible to pay for such exports in sterling purchased at a lower rate than that which the British Government believed to be a reflection of the true value of the pound and officially fixed as such.

Plainly enough, a single currency having multiple values has important bearings upon the flow of goods and upon international economic relations. In the case of Great Britain, the situation may not have been serious because, as we noted, free sterling played a relatively small share in the economic interchange between the two countries. The "free" rate was employed only in limited transactions and evidently represented on the part of Great Britain merely a transitory compromise with circumstances. In short, the official rate was not an unreality. But in the case of some countries, a dual system of rates of exchange may have decisive economic effects through highly organized manipulation of exchange, with all the evils that result from confusion and from depreciated currencies.

To dispose of the case on the assumption that it merely involves enforcement of a Congressional policy for assuring approximate accuracy in determining the true dollar value of a particular importation is to throw the significance of the case out of focus. The problem, as I see it, is whether Congress by § 522(c) of the Tariff Act of 1930, 46 Stat. 590, 739, 31 U. S. C. § 372(c), prohib-

ited the Secretary of the Treasury from safeguarding the public interest as he did, in relation to dislocations in the money markets following the outbreak of the war and to their repercussions both upon our domestic economy and our international relations. That the Treasury's instruction to the collectors of customs to assess tariff duties on the basis of the sterling rate fixed by the British Government was not an ordinary Treasury order affecting the collection of revenue is attested by the fact that the instruction was the result of a conference of the Secretary of State, the Secretary of the Treasury, the Attorney General and the Secretary of Agriculture. See New York Times, April 17, 1940, p. 4, col. 5; The Commercial and Financial Chronicle, April 20, 1940, Vol. 150, Pt. 2, pp. 2478-79.

It is not suggested that apart from § 522(e) this Government could not protect its interests in relation to the abnormal currency situations precipitated by the war through such action as the Secretary of the Treasury here took. The wide duties of financial supervision possessed by the Secretary by virtue of his office and the broad powers implied in various provisions of law, see for instance: 5 U. S. C. § 242, 19 U. S. C. § 3; § 624 of the Tariff Act of 1930, 46 Stat. 590, 759, 19 U. S. C. § 1624, and *Boske* v. *Comingore*, 177 U. S. 459, would give him ample warrant to fix a rate for dollar conversions of foreign currencies on a uniform basis reflecting the dominant value among multiple values of a foreign currency and one not subject to manipulations or influences adverse to our interests.

Withdrawal of this power of the Secretary of the Treasury implies a radical curtailment of his historic and appropriate authority to protect the nation's fiscal interests. If it chose, of course Congress could so curtail the Secretary's powers. But such an important change in the executive responsibility for our fiscal affairs ought to be disclosed through some unequivocal Congressional expression. To find such destructive force in § 522(e) is to attribute to it a potency not designed by Congress. It is conceded that in the legislation which is now § 522(e) Congress was concerned solely with fluctuations in a single exchange rate, a problem thrown up after the First World War. And so Congress designated the Federal Reserve Bank as a fact-finding agency to ascertain the most durable among fluctuating quotations. But multiple rates for a single currency—with their effects upon the flow of goods and upon international economic relations and the opportunities they afford for highly organized manipulations of

exchange—present a totally different problem. That problem, as is admitted by the Federal Reserve Bank appearing before us as *amicus curiae*, was not at all in the contemplation of Congress. That problem was not dealt with by Congress because it did not confront Congress. As a problem it did not emerge until, in 1940, the present war confronted the Federal Reserve Bank and the Secretary of the Treasury with it.

The Federal Reserve Bank and the Secretary of the Treasury, having different functions, naturally dealt with it differently. Although, to be sure, § 522(c) charged the Federal Reserve Bank with the ascertainment of a single exchange rate, the Bank naturally enough solved the dilemma which confronted it when there were two rates for sterling by reporting both, although the significance of the two rates and the range of their functions varied greatly. It was not for the Bank to pick only one rate, for the Bank is merely a reporting agency and not a policy-making agency. But the determination whether one of the two rates is *the* rate, and if so which should have that fiscal function, is a policy problem, and the Secretary of the Treasury is the agency vested with responsibility for fiscal policies.

For the selection by the Secretary of the Treasury of an exchange rate in a situation like the one before us has implications far beyond translating into dollars the value at which a particular importer actually settled for the foreign price of his goods. The selection of the governing rate of exchange in the case of multiple rates affects at least three very important phases of our international economic relations. By § 402 of the Tariff Act of 1930, 46 Stat. 590, 708, 19 U. S. C. § 1402, in the assessment of *ad valorem* duties it is necessary to ascertain the foreign market value, which normally means the foreign home value. Commodities subject to the "official" rate and commodities available through "free" sterling may well have an identical home value and yet, according to the contention of the importer, one valuation would have to be reached according to § 522(c) and another according to § 402. Again, the Secretary of the Treasury may impose countervailing duties whenever he finds that imported goods enjoy a bounty, direct or indirect. Section 303 of the Tariff Act of 1930, 46 Stat. 590, 687, 19 U. S. C. § 1303. Such bounties may readily take the form of favorable exchange rates. An unwarrantably rigid denial to the Secretary of the determination of an exchange rate which in substance corresponds to the realties of international exchange may force him to exercise the penalizing power of imposing counter-

vailing duties. Finally, foreign exchange rates affect the fruitful use of foreign trade agreements. Section 350 of the Tariff Act of 1930 as amended by 48 Stat. 943, 19 U. S. C. § 1351 *et seq.*

All these dangerous potentialities would of course be irrelevant if Congress had dealt with the problem of multiple rates in a rigid way and put the responsibility upon the Federal Reserve Bank to select one of such multiple rates. But the hand of the Government ought not to be tied too closely where, to put it mildly, the Congressional purpose has been ambiguously expressed. We cannot find such purpose from a reading of what Congress has written. We are hardly justified in assuming that if Congress had addressed itself to this problem it would have tied the hands of the Secretary of the Treasury and brought into play all the difficulties that have been indicated in the ascertainment of foreign home value, in the imposition of countervailing duties, and in embarrassing the policy of trade agreements. The power of Congress to pass new legislation is hardly a reason for giving old legislation a construction that disregards its history and its context and the unhappy consequences of such disregard.

Of course, general condemnation of a practice covers any specific manifestation of it, even though the latter was "unforeseen" by Congress, *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, just as a general outlawry of the use of a false document hits also a use to which the document was not "ordinarily" put when the legislation was passed. *Browder* v. *United States*, 312 U. S. 335. But these are instances of proper statutory construction quite irrelevant to the present case. It is one thing for judges not to excise a particular situation from language appropriately describing a general problem. Judicial interpolation into a statute of a wholly unrelated problem, not envisaged by Congress is quite another matter. In this case we have not an unforeseen situation fitting into a general context. Here we have an unforeseen problem with which Congress did not deal and yet, by not dealing with it, is said to have taken away authority theretofore belonging to the Secretary of the Treasury. If the problem itself was not in the contemplation of Congress, as this problem was not, how can it be said that Congress legislated concerning that problem unless it be that legislation is the product of disembodied dreams.

The judgment should be affirmed.

Mr. Justice Black joins in this dissent.